

ASSEMBLY BILL

No. 2619

Introduced by Assembly Member V. Manuel Pérez

February 24, 2012

An act to amend Sections 63010, 63030, 63031, 63034, and 63035 of, and to add Article 5.5 (commencing with Section 63047.1) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 2619, as introduced, V. Manuel Pérez. Start-Up California Impact Investment Fund program.

The Bergeson-Peace Infrastructure and Economic Development Bank Act authorizes the California Infrastructure and Economic Development Bank, governed by a board of directors, to make loans and provide other assistance to public and private entities for various types of economic development projects, among other things. The activities of the bank under these provisions are funded from the California Infrastructure and Economic Development Bank Fund, which is continuously appropriated for these purposes.

This bill would create the Start-Up California Impact Investment Fund program to provide startup equity funds, as defined, to startup firms and small businesses. This bill would authorize the bank to make expenditures from the startup equity fund account, which is created within the Infrastructure and Economic Development Bank Fund, to invest in startup firms and small businesses pursuant to certain criteria, priorities, and guidelines, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) More than 90 percent of all jobs created come from small
4 and early stage firms, with most of these jobs coming from firms
5 that are less than five years old. The United States Census Bureau
6 shows that from 1990 to 2003, inclusive, nearly 80 percent of jobs
7 created came from firms that employ 20 or fewer employees.
8 Recent studies show that without entrepreneurs and startups, there
9 was no net job creation during the period of 1977 to 2005,
10 inclusive.

11 (b) National government leaders are beginning to take a more
12 serious look at ways to support business development. The White
13 House has led these efforts with the Start-Up America initiative
14 to increase the number and scale of new high-growth firms that
15 are creating economic growth, innovation, and quality jobs.

16 (c) Recently, as part of the Start-Up American Initiative, the
17 federal Small Business Administration has committed up to one
18 billion dollars (\$1,000,000,000) over the next five years to
19 guarantee early stage venture funds to encourage private sector
20 investment by lowering the credit risk.

21 (d) In response to national efforts, several states have recently
22 created, or will soon create, venture funds to support startups and
23 early stage firms. A dozen states have used their share of the federal
24 Small Business Credit Initiative as a source of capital for their
25 fund.

26 (e) While historically California has been a national leader in
27 startups and venture capital, the state's slow recovery from the
28 recession and the increasing competition from other states
29 illustrates the need for the Legislature to act.

30 (f) In order to stimulate the economy and create new quality
31 jobs in this state, the Legislature must establish a startup equity
32 investment fund to support startup firms and small businesses.

33 SEC. 2. Section 63010 of the Government Code is amended
34 to read:

35 63010. For purposes of this division, the following words and
36 terms shall have the following meanings unless the context clearly
37 indicates or requires another or different meaning or intent:

1 (a) “Act” means the Bergeson-Peace Infrastructure and
2 Economic Development Bank Act.

3 (b) “Bank” means the California Infrastructure and Economic
4 Development Bank.

5 (c) “Board” or “bank board” means the Board of Directors of
6 the California Infrastructure and Economic Development Bank.

7 (d) “Bond purchase agreement” means a contractual agreement
8 executed between the bank and a sponsor, or a special purpose
9 trust authorized by the bank or a sponsor, or both, whereby the
10 bank or special purpose trust authorized by the bank agrees to
11 purchase bonds of the sponsor for retention or sale.

12 (e) “Bonds” means bonds, including structured, senior, and
13 subordinated bonds or other securities; loans; notes, including
14 bond, revenue, tax or grant anticipation notes; commercial paper;
15 floating rate and variable maturity securities; and any other
16 evidences of indebtedness or ownership, including certificates of
17 participation or beneficial interest, asset backed certificates, or
18 lease-purchase or installment purchase agreements, whether taxable
19 or excludable from gross income for federal income taxation
20 purposes.

21 (f) “Cost,” as applied to a project or portion thereof financed
22 under this division, means all or any part of the cost of construction,
23 renovation, and acquisition of all lands, structures, real or personal
24 property, rights, rights-of-way, franchises, licenses, easements,
25 and interests acquired or used for a project; the cost of demolishing
26 or removing any buildings or structures on land so acquired,
27 including the cost of acquiring any lands to which the buildings
28 or structures may be moved; the cost of all machinery, equipment,
29 and financing charges; interest prior to, during, and for a period
30 after completion of construction, renovation, or acquisition, as
31 determined by the bank; provisions for working capital; reserves
32 for principal and interest and for extensions, enlargements,
33 additions, replacements, renovations, and improvements; and the
34 cost of architectural, engineering, financial and legal services,
35 plans, specifications, estimates, administrative expenses, and other
36 expenses necessary or incidental to determining the feasibility of
37 any project or incidental to the construction, acquisition, or
38 financing of any project, and transition costs in the case of an
39 electrical corporation.

(g) “Economic development facilities” means real and personal property, structures, buildings, equipment, and supporting components thereof that are used to provide industrial, recreational, research, commercial, utility, or service enterprise facilities, community, educational, cultural, or social welfare facilities and any parts or combinations thereof, and all facilities or infrastructure necessary or desirable in connection therewith, including provision for working capital, but shall not include any housing.

(h) “Electrical corporation” has the meaning set forth in Section 218 of the Public Utilities Code.

(i) *“Equity financing” means the shares of common or preferred stock issued by a startup firm or small business to the bank in exchange for capital.*

(j)

(j) “Executive director” means the Executive Director of the California Infrastructure and Economic Development Bank appointed pursuant to Section 63021.

(k)

(k) “Financial assistance” in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter 4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order or in connection with a financing for an economic development facility.

1 For purposes of this subdivision, “grant” does not include grants
2 made by the bank except when acting as an agent or intermediary
3 for the distribution or packaging of financing available from
4 federal, private, or other public sources.

5 ~~(k)~~

6 (l) “Financing order” has the meaning set forth in Section 840
7 of the Public Utilities Code.

8 ~~(t)~~

9 (m) “Guarantee trust fund” means the California Infrastructure
10 Guarantee Trust Fund.

11 ~~(m)~~

12 (n) “Infrastructure bank fund” means the California
13 Infrastructure and Economic Development Bank Fund.

14 ~~(n)~~

15 (o) “Loan agreement” means a contractual agreement executed
16 between the bank or a special purpose trust and a sponsor that
17 provides that the bank or special purpose trust will loan funds to
18 the sponsor and that the sponsor will repay the principal and pay
19 the interest and redemption premium, if any, on the loan.

20 ~~(o)~~

21 (p) “Participating party” means any person, company,
22 corporation, association, state or municipal governmental entity,
23 partnership, firm, or other entity or group of entities, whether
24 organized for profit or not for profit, engaged in business or
25 operations within the state and that applies for financing from the
26 bank in conjunction with a sponsor for the purpose of implementing
27 a project. However, in the case of a project relating to the financing
28 of transition costs or the acquisition of transition property, or both,
29 on the request of an electrical corporation, or in connection with
30 a financing for an economic development facility, or for the
31 financing of insurance claims, the participating party shall be
32 deemed to be the same entity as the sponsor for the financing.

33 ~~(p)~~

34 (q) “Project” means designing, acquiring, planning, permitting,
35 entitling, constructing, improving, extending, restoring, financing,
36 and generally developing public development facilities or economic
37 development facilities within the state or financing transition costs
38 or the acquisition of transition property, or both, upon approval of
39 a financing order by the Public Utilities Commission, as provided

1 in Article 5.5 (commencing with Section 840) of Chapter 4 of Part
2 1 of Division 1 of the Public Utilities Code.

3 ~~(g)~~

4 (r) “Public development facilities” means real and personal
5 property, structures, conveyances, equipment, thoroughfares,
6 buildings, and supporting components thereof, excluding any
7 housing, that are directly related to providing the following:

8 (1) “City streets” including any street, avenue, boulevard, road,
9 parkway, drive, or other way that is any of the following:

10 (A) An existing municipal roadway.

11 (B) Is shown upon a plat approved pursuant to law and includes
12 the land between the street lines, whether improved or unimproved,
13 and may comprise pavement, bridges, shoulders, gutters, curbs,
14 guardrails, sidewalks, parking areas, benches, fountains, plantings,
15 lighting systems, and other areas within the street lines, as well as
16 equipment and facilities used in the cleaning, grading, clearance,
17 maintenance, and upkeep thereof.

18 (2) “County highways” including any county highway as defined
19 in Section 25 of the Streets and Highways Code, that includes the
20 land between the highway lines, whether improved or unimproved,
21 and may comprise pavement, bridges, shoulders, gutters, curbs,
22 guardrails, sidewalks, parking areas, benches, fountains, plantings,
23 lighting systems, and other areas within the street lines, as well as
24 equipment and facilities used in the cleaning, grading, clearance,
25 maintenance, and upkeep thereof.

26 (3) “Drainage, water supply, and flood control” including, but
27 not limited to, ditches, canals, levees, pumps, dams, conduits,
28 pipes, storm sewers, and dikes necessary to keep or direct water
29 away from people, equipment, buildings, and other protected areas
30 as may be established by lawful authority, as well as the
31 acquisition, improvement, maintenance, and management of
32 floodplain areas and all equipment used in the maintenance and
33 operation of the foregoing.

34 (4) “Educational facilities” including libraries, child care
35 facilities, including, but not limited to, day care facilities, and
36 employment training facilities.

37 (5) “Environmental mitigation measures” including required
38 construction or modification of public infrastructure and purchase
39 and installation of pollution control and noise abatement
40 equipment.

1 (6) "Parks and recreational facilities" including local parks,
2 recreational property and equipment, parkways and property.

3 (7) "Port facilities" including docks, harbors, ports of entry,
4 piers, ships, small boat harbors and marinas, and any other
5 facilities, additions, or improvements in connection therewith.

6 (8) "Power and communications" including facilities for the
7 transmission or distribution of electrical energy, natural gas, and
8 telephone and telecommunications service.

9 (9) "Public transit" including air and rail transport of goods,
10 airports, guideways, vehicles, rights-of-way, passenger stations,
11 maintenance and storage yards, and related structures, including
12 public parking facilities, equipment used to provide or enhance
13 transportation by bus, rail, ferry, or other conveyance, either
14 publicly or privately owned, that provides to the public general or
15 special service on a regular and continuing basis.

16 (10) "Sewage collection and treatment" including pipes, pumps,
17 and conduits that collect wastewater from residential,
18 manufacturing, and commercial establishments, the equipment,
19 structures, and facilities used in treating wastewater to reduce or
20 eliminate impurities or contaminants, and the facilities used in
21 disposing of, or transporting, remaining sludge, as well as all
22 equipment used in the maintenance and operation of the foregoing.

23 (11) "Solid waste collection and disposal" including vehicles,
24 vehicle-compatible waste receptacles, transfer stations, recycling
25 centers, sanitary landfills, and waste conversion facilities necessary
26 to remove solid waste, except that which is hazardous as defined
27 by law, from its point of origin.

28 (12) "Water treatment and distribution" including facilities in
29 which water is purified and otherwise treated to meet residential,
30 manufacturing, or commercial purposes and the conduits, pipes,
31 and pumps that transport it to places of use.

32 (13) "Defense conversion" including, but not limited to, facilities
33 necessary for successfully converting military bases consistent
34 with an adopted base reuse plan.

35 (14) "Public safety facilities" including, but not limited to, police
36 stations, fire stations, court buildings, jails, juvenile halls, and
37 juvenile detention facilities.

38 (15) "State highways" including any state highway as described
39 in Chapter 2 (commencing with Section 230) of Division 1 of the

1 Streets and Highways Code, and the related components necessary
2 for safe operation of the highway.

3 (16) (A) Military infrastructure, including, but not limited to,
4 facilities on or near a military installation, that enhance the military
5 operations and mission of one or more military installations in this
6 state. To be eligible for funding, the project shall be endorsed by
7 the Office of Military and Aerospace Support established pursuant
8 to Section 13998.2.

9 (B) For purposes of this subdivision, “military installation”
10 means any facility under the jurisdiction of the Department of
11 Defense, as defined in paragraph (1) of subsection (e) of Section
12 2687 of Title 10 of the United States Code.

13 ~~(r)~~

14 (s) “Rate reduction bonds” has the meaning set forth in Section
15 840 of the Public Utilities Code.

16 ~~(s)~~

17 (t) “Revenues” means all receipts, purchase payments, loan
18 repayments, lease payments, and all other income or receipts
19 derived by the bank or a sponsor from the sale, lease, or other
20 financing arrangement undertaken by the bank, a sponsor or a
21 participating party, including, but not limited to, all receipts from
22 a bond purchase agreement, and any income or revenue derived
23 from the investment of any money in any fund or account of the
24 bank or a sponsor and any receipts derived from transition property.
25 Revenues shall not include moneys in the General Fund of the
26 state.

27 ~~(t)~~

28 (u) “Special purpose trust” means a trust, partnership, limited
29 partnership, association, corporation, nonprofit corporation, or
30 other entity authorized under the laws of the state to serve as an
31 instrumentality of the state to accomplish public purposes and
32 authorized by the bank to acquire, by purchase or otherwise, for
33 retention or sale, the bonds of a sponsor or of the bank made or
34 entered into pursuant to this division and to issue special purpose
35 trust bonds or other obligations secured by these bonds or other
36 sources of public or private revenues. Special purpose trust also
37 means any entity authorized by the bank to acquire transition
38 property or to issue rate reduction bonds, or both, subject to the
39 approvals by the bank and powers of the bank as are provided by

1 the bank in its resolution authorizing the entity to issue rate
2 reduction bonds.

3 ~~(u)~~

4 (v) “Sponsor” means any subdivision of the state or local
5 government including departments, agencies, commissions, cities,
6 counties, nonprofit corporations formed on behalf of a sponsor,
7 special districts, assessment districts, and joint powers authorities
8 within the state or any combination of these subdivisions that
9 makes an application to the bank for financial assistance in
10 connection with a project in a manner prescribed by the bank. This
11 definition shall not be construed to require that an applicant have
12 an ownership interest in the project. In addition, an electrical
13 corporation shall be deemed to be the sponsor as well as the
14 participating party for any project relating to the financing of
15 transition costs and the acquisition of transition property on the
16 request of the electrical corporation and any person, company,
17 corporation, partnership, firm, or other entity or group engaged in
18 business or operation within the state that applies for financing of
19 any economic development facility, shall be deemed to be the
20 sponsor as well as the participating party for the project relating
21 to the financing of that economic development facility.

22 (w) *“Startup equity funds” means money and resources invested*
23 *in startup firms and small businesses with exceptional growth*
24 *potential. In exchange for this capital, the bank receives an equity*
25 *stake in the firm or business represented by shares of common or*
26 *preferred stock.*

27 ~~(v)~~

28 (x) “State” means the State of California.

29 ~~(w)~~

30 (y) “Transition costs” has the meaning set forth in Section 840
31 of the Public Utilities Code.

32 ~~(x)~~

33 (z) “Transition property” has the meaning set forth in Section
34 840 of the Public Utilities Code.

35 SEC. 3. Section 63030 of the Government Code is amended
36 to read:

37 63030. (a) Bonds issued by the bank or a special purpose trust
38 are legal investments for all trust funds, the funds of all insurance
39 companies, banks, both commercial and savings, trust companies,
40 executors, administrators, trustees, and other fiduciaries, for state

1 school funds, pension funds, and for any funds that may be invested
2 in county, school, or municipal bonds. These bonds are securities
3 that may legally be deposited with, and received by, any state or
4 municipal officer or agency or political subdivision of the state
5 for any purpose for which the deposit of bonds or obligations of
6 the state is now, or may hereafter be, authorized by law, including,
7 deposits to secure public funds.

8 *(b) Startup equity funds established by the bank are legal*
9 *investments for all trust funds, the funds for all insurance*
10 *companies, banks, both commercial and savings, trust companies,*
11 *executors, administrators, trustees, and other fiduciaries, for state*
12 *and local pension funds.*

13 SEC. 4. Section 63031 of the Government Code is amended
14 to read:

15 ~~63031. No liability.~~ *(a) Liability shall not be incurred by the*
16 *bank beyond the extent to which funds have been provided under*
17 *this division. However, for the purposes of meeting the necessary*
18 *expenses of initial organization and operation until the date that*
19 *the bank derives revenues or proceeds from bonds as provided*
20 *under this division, the bank may borrow money as needed for the*
21 *purposes of meeting the necessary expenses of initial organization*
22 *and operation from the Pooled Money Investment Account, as*
23 *specified in subdivision (w) of Section 63025.1 or from any special*
24 *funds, including the special funds of existing financing authorities.*
25 *The borrowed money shall be repaid with interest within a*
26 *reasonable time after the bank receives revenues or proceeds from*
27 *bonds as provided under this division.*

28 *(b) Liability shall not be incurred by the bank or the state as*
29 *related to a startup equity fund beyond the money that is available*
30 *for expenditure in the startup equity fund account.*

31 SEC. 5. Section 63034 of the Government Code is amended
32 to read:

33 63034. The bank shall establish a reasonable schedule of
34 administrative fees, which shall be paid by the sponsor or the
35 participating party pursuant to Section 63074 *and by the startup*
36 *firm or small business pursuant to Section 63047.2*, to reimburse
37 the state for the costs of administering this division.

38 SEC. 6. Section 63035 of the Government Code is amended
39 to read:

1 63035. The bank shall, ~~not later than November 1~~ *before*
2 *November 2* of each year, submit to the Governor and the Joint
3 Legislative Budget Committee a report of its activities pursuant
4 to this division for the preceding fiscal year. The report shall
5 include all of the following:

6 (a) (1) A listing of applications accepted, including a description
7 of the expected employment impact of each project.

8 (2) A separate summary of applications for the Infrastructure
9 State Revolving Fund Program, including a summary of the number
10 of preliminary applications that did not receive funding and the
11 reason the applicant did not qualify.

12 (3) *A separate summary of the startup equity fund investments,*
13 *including the number of investments, the size of each investment,*
14 *and the type of firm, by industry sector, that received an investment.*
15 *The summary shall also include a description of the expected direct*
16 *and indirect employment impact of the investments.*

17 (b) A specification of bonds sold and interest rates thereon.

18 (c) The amount of other public and private funds leveraged by
19 the assistance provided.

20 (d) A report of revenues and expenditures for the preceding
21 fiscal year, including all of the bank's costs. The information
22 provided pursuant to this subdivision shall include, but need not
23 be limited to, both of the following:

24 (1) The amount and source of total bank revenues. Revenues
25 shall be shown by main categories of revenues, including interest
26 earnings, *compensation received from startup equity fund*
27 *investments, the amount of startup equity funds, available for*
28 *distribution*, fees collected, and bond proceeds, for each bank
29 program.

30 (2) The amount and type of total bank expenditures.
31 Expenditures shall be shown by major categories of expenditures,
32 including *startup equity fund investments made*, loans provided,
33 debt service payments, and program support costs, for each bank
34 program.

35 (e) A projection of the bank's needs and requirements for the
36 coming year.

37 (f) Recommendations for changes in state and federal law
38 necessary to meet the objectives of this division.

SEC. 7. Article 5.5 (commencing with Section 63047.1) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 5.5. Start-Up California Impact Investment Fund
Program

63047.1. (a) There is created at the bank the Start-Up California Impact Investment Fund program to provide startup equity funds to startup firms and small businesses.

(b) The bank may make expenditures from the startup equity fund account, which is hereby created within the Infrastructure and Economic Development Bank Fund, to invest in startup firms and small businesses pursuant to the criteria, priorities, and guidelines adopted by the bank pursuant to Section 63047.2.

63047.2. (a) After consulting with appropriate state and local agencies and investors who have investment policies that target businesses in lower income communities, the bank shall establish criteria, priorities, and guidelines for the selection of startup firms and small businesses to receive startup equity funds from the bank. Startup equity fund investments shall comply with the criteria, priorities, and guidelines adopted by the bank.

(b) The criteria, priorities, and guidelines shall, at a minimum, do all of the following:

(1) Encourage the establishment of startup firms and growth of early stage small businesses.

(2) Offer financial opportunities to emerging managers who have mentoring agreements with equity asset managers with proven track records, have been in business for more than five years, and have raised two or more equity funds of five hundred million dollars (\$500,000,000) or more.

(3) Support business development in lower income areas of the state.

(4) Require reporting of the social and environmental impacts of the investments on an annual basis.

(5) Encourage business development that includes the export of products from California.

(6) Encourage businesses that are manufacturing overseas to bring production lines back to the United States and products to be made in California.

1 (c) The bank may contract with professional equity fund
2 managers who have demonstrated expertise in economically
3 targeted investments and impact investment mandates to implement
4 the Start-Up California Impact Investment Fund program.
5 63047.3. This section shall not apply to any other financing
6 provided by the bank.

O